

Parks & Open Spaces and Ely Markets Service Delivery Model

Committee: Council

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Issue

1. To consider the future service delivery model for Parks (Grounds Maintenance) & Open Spaces and Ely Markets.

Recommendations

2. Members are requested to:

- 2.1 Approve a 10-year contract, including a licence to occupy the Depot, Littleport, to ECSS for the delivery of Parks & Open Spaces (Grounds Maintenance) Service commencing on 1 April 2027;
- 2.2 Approve a 10-year contract to ECSS for the delivery of Ely Markets Service commencing on 1 April 2027;
- 2.3 Approve a 10-year lease to ECSS for Ely Market Place with year 1 cost of £39,000 (increasing annually with RPI);
- 2.4 Approve changes to the ECSS Shareholder Agreement (with effect from 1 April 2027) as set out in Appendix 1,
- 2.5 Approve changes to the ECTC Shareholder Agreement (with effect from 1 April 2027) as set out in Appendix 2, and
- 2.6 Authorise the Director Legal & Monitoring Officer to complete the legal documentation to implement the decisions of 2.1 to 2.6 above.

Background/Options

3. Parks & Open Spaces (Grounds Maintenance) and Ely Markets services are currently managed by East Cambs Trading Company (ECTC). Council approved this arrangement in 2016 (Ely Markets) and 2017 (Parks & Open Spaces). Both contracts expire on 31 March 2027.
4. In 2017, Council approved a lease to ECTC for Ely Market Place. At the time, the lease was for £30,000, increasing in line with the terms of the lease. The lease cost for 2026/27 is £38,049. The lease expires on 31 March 2027.
5. The Council was able to directly award contracts to ECTC as at the time of award ECTC was a teckal company. ECTC is no longer a teckal company.

6. A Teckal company is a separate corporate entity controlled by a public authority that can be awarded public contracts without going through a competitive tender process.]

Parks & Open Spaces (Grounds Maintenance)

7. In 2017, the value of the contract was £699,548, increasing with inflation. Over the years, ECTC has increased the number of sites that it maintains on behalf of the Council and has not increased the management fee that was agreed in 2017 (with the exception of inflationary increases). ECTC provided a £100,000 discount on the management fee for each of the years 2020/21, 2021/22 and 2022/23. This represented an overall saving to the Council of £300,000.
8. ECTC has been able to include additional sites and offer a discount because it has been able to generate income and profit from other organisations and has used the profits to invest in the service and offer discounts on the management fee to the Council where appropriate. In 2025/26 ECTC generated 33% of its income from other organisations.

The value of the contract in 2026/27 is £1,079,452.

Ely Markets

9. There is no cost to the Council for Ely Markets. It does not pay a set management fee to ECTC. The Council collects the income from the operation of the markets, and this is then paid to ECTC.
10. Since 2016, Ely Markets has increased its revenue by 59%. Ely Markets has provided a vibrant market that has generated millions of pounds of spend into the local economy.
11. Ely Markets also provides another direct financial benefit to the Council by leasing Ely Market Place at a cost of £30,000 per annum (increasing annually in accordance with the lease). This is income that the Council would not be able to achieve if it directly managed the service in-house. In 2026/27 the cost of the lease is £38,049.
12. In 2016 Ely /Markets employed 3 part-time core staff. In 2025, Ely Markets employs 2 full-time and 3 part-time core staff and utilises several casual staff, ranging from wrecking crew to stewards (that assist with event management and safety on special market days, e.g. Foodie Fridays). Investment has also been made to ensure the improvement and sustainability of the service. All of this has been achieved at no cost to the Council.
13. Financial returns aside, Ely Markets can celebrate many successes (not exhaustive): Vegan Fair; Festive Lates; Mini Markets; Foodie Fridays; Prince of Wales Visit; NABMA Award Winner; Queen's Jubilee Weekend; Christmas Markets; and Environmental Campaign #Bring Your Own.
14. These successes increase city centre footfall, provide choice for the community, facilitate small businesses (providing a launch-pad which sometimes leads to established business in the city centre and beyond) and provide a more sustainable and environmentally responsible offer to the community.

15. Council must now consider the options and decide the future service delivery model for both Parks & Open Spaces (Grounds Maintenance) and Ely Markets. There are 4 options for the Council to consider:

- i) Status quo- direct award to ECTC;
- ii) Award a contract to East Cambs Street Scene (ECSS);
- iii) Bring the service back in-house; or
- iv) Competitive tender.

16. The table below provides a summary of the options, considers the implications and gives an opinion on the recommendation.

Option	Recommendation	Reason
Direct award to ECTC	Not recommended	ECTC is not a teckal company, and therefore there is a risk of challenge from other external service providers.
Direct award to ECSS	Recommended	ECSS is a teckal company, and therefore the Council can directly award a contract to ECSS to deliver the services.
Bring the service back in-house	Not recommended	This option has cost implications for the Council.
Competitive tender	Not recommended	This option would comply with the Procurement Act 2023. If ECTC is not successful in its bid, the Council would not have the benefit of arm's-length control that it currently enjoys.

Option 1- Direct award to ECTC

17. ECTC is not a Teckal company and for this reason the Council cannot rely on the exemption that allows the Council to directly award the contract to ECTC without going through a tender process.

18. The Chief Executive has considered the other exemptions in the Procurement Act 2023: urgency (need to demonstrate that this was strictly necessary for reasons of extreme and unavoidable urgency); only one supplier capable (need to demonstrate that there are no other service providers); or additional or repeat goods, services or works (need to demonstrate that another provider would provide incompatible services or disproportionate technical difficulties).

19. The Council cannot apply these exemptions. That said, the Council could still decide to directly award a contract to ECTC; however, it must consider the risk of challenge associated with such a decision.

20. There could be a risk of challenge by a competitive supplier. Any economic operator that could have bid for the contracts could challenge the direct award. There would be several competitors for both services. A challenger could seek: an automatic suspension of the award; an order setting aside the contracts; and/or financial remedies.
21. If this option is chosen the Council would be required to publish a notice on its website of its intention to make a direct award (this is known as a Transparency Notice) before the contract is made, and a Contract Award Notice afterwards. This may prompt a challenge. A standstill period (8 days) could reduce, but not eliminate, the risk of challenge.
22. The Council could mitigate its risk by producing a detailed written justification of why a competitive process is inappropriate. Additionally, the Council could publish the Transparency Notice and monitor the challenge. The risk reduces after the 8-day standstill period, but the risk does not disappear.
23. There is an alternative option through the Council's other wholly owned trading company ECSS that does not carry the risk described above. For this reason, whilst there is justification, a direct award to ECTC is not recommended.

Option 2- Direct award to ECSS

24. This option complies with the Procurement Act 2023. ECSS is a teckal company. The Council would be entitled to award contracts to ECSS directly under the vertical arrangement exemption in the Procurement Act 2023. ECSS is allowed to generate 20% of its income from other commercial contracts. The table below demonstrates that the ECSS would be comfortably within these limitations.

	2026/27
ECSS	5,953,162
Parks	1,079,452
Markets	350,349
Total Income from ECDC	£7,382,963
External Parks income	511,888
Total income	7,984,851
% External	6.48%

25. This is the recommended option, and the practical implications of this option are explored further below.
26. Note: Consideration has been given as to whether the Council could do a direct award to ECSS and then ECSS assign the contract to ECTC. This would present the same challenges as Option 1 above and therefore is not considered further.

Option 3- Bring the services in-house

27. This option complies with the Procurement Act 2023. The Council would need to consider the financial implications of making such a decision. The implications include:

- Loss of income on the lease of Ely Market Place;
- Loss of income from the licence at The Depot, Littleport;
- Loss of income from the rental of vehicles;
- Loss of income from office accommodation at The Grange, Ely;
- Loss of income from service charges (payroll, HR, finance, IT);
- Business rates liability (The Depot, Littleport and Ely Market Place); and
- Additional pension liability arising from TUPE of staff.

28. The total cost burden is an estimated £350,000 for 2027/28. For this reason, this option is not recommended.

Option 4- Competitive tender

29. This option complies with the Procurement Act 2023. The Council would need to consider the following (not exhaustive):

- Producing a comprehensive specification that deals with the challenges of changing seasons;
- There is no guarantee that a competitive process would result in a more efficient or cost-effective service being offered by another provider;
- The level of flexibility, influence and control (through the annual business plan and shareholder agreement) the Council enjoys through a wholly owned company;
- General inflation levels and the cost of fuel are currently higher than they have been in previous years. It is likely these costs would be built into the contract; and
- The cost of undertaking a procurement process could be between £30,000 and £40,000.

Practical implications of Option 2 (Recommended Option)

30. The implications for the Council (not exhaustive):

- Approve minor amendments to the Shareholder Agreements for both ECTC and ECSS (Appendix 1 and 2);

- Approve a new 10-year contract to ECSS for the delivery of Parks & Open Spaces (Grounds Maintenance) and Ely Markets Services;
- Approve a new 10-year lease to ECSS for Market Place, Ely;
- Approve a new 10-year licence to occupy to ECSS for The Depot, Littleport; and
- Change the apportionment of support charges and vehicle hire costs between ECTC and ECSS (there will be no loss to the Council).

[Note: No changes are required to the Articles of Association for either ECTC or ECSS].

31. The implications for ECTC include (not exhaustive):

- Consideration of the best way to deal with grounds maintenance contracts for non-council contracts (whether to novate or sub-contract);
- TUPE transfer of staff to ECSS;
- Approve changes to the Shareholder Agreement;
- No longer required to hold a DVSA Operator's Licence; and
- Incorporate changes to the Business plan for 2027/28 and beyond.

32. The ECTC Finance Manager has confirmed that there will be no negative impact on the financial sustainability of the company. ECTC will continue to be able to meet its liabilities when they fall due, including repayment of its loan from the Council.

33. The implications for ECSS (not exhaustive):

- TUPE transfer of staff from ECTC;
- Changes to branding on livery and staff uniforms;
- If relevant, inter-company agreement for grounds maintenance between ECTC and ECSS (depending on decisions taken by ECTC);
- Approve changes to the ECSS Shareholder Agreement;
- Approve new contracts with the Council to deliver Parks & Open Spaces (Grounds Maintenance) and Ely Markets including a licence to occupy at The Depot, Littleport and lease of Ely Market Place;
- Changes to the DVSA Operator's Licence; and
- Incorporate changes to the Business Plan for 2027/28 and beyond.

Arguments/Conclusions

34. The Council has benefited from delivering the services through a wholly owned company, and these can continue, albeit in a different wholly owned company.
35. If approved, the Council's wholly owned companies would have better alignment. ECTC would solely trade as a property development company with associated property services, and ECSS would be a service delivery company.
36. The recommendation is to award 10-year contracts for Parks and Open Spaces (Grounds Maintenance) and Ely Markets to ECSS from 1 April 2027, together with the associated lease and licence arrangements. This option provides a legally compliant route under the Procurement Act 2023, retains the benefits of wholly owned company delivery and avoids the estimated additional cost of bringing the services in-house. It also maintains Council influence (through approval of the annual business plan) and operational flexibility while providing long-term certainty for service planning, investment and staff.
37. Subject to the approval of the recommendations and completion of the required legal and governance documentation, the transfer arrangements will be prepared in advance of the existing contracts ending on 31 March 2027 to facilitate implementation on 1 April 2027.
38. The Ely Markets contract award has no financial implications to the Council.
39. The Parks & Open Spaces (Grounds Maintenance) contract in Year 1 will be £1,079,452 + the relevant inflationary figure and will subsequently increase with inflation in future years. The 2027/28 (Year 1) will be agreed by Council in February 2027 as part of the normal budget setting process.

Additional Implications Assessment

Financial Implications Discussed in the body of the report	Legal Implications Discussed in the body of the report	Human Resources (HR) Implications Yes- changes to secondment agreements for affected staff.
Equality Impact Assessment (EIA) Not required as there are no proposed changes to the actual service.	Carbon Impact Assessment (CIA) Not required as there are no proposed changes to the actual service.	Data Protection Impact Assessment (DPIA) ECTC, ECSS and ECDC will need to consider this in relation to HR matters if Option 2 is approved. ECTC, ECSS and ECDC will need to assess this and ensure data is safely novated. If relevant, data sharing agreements will need to be amended.

Appendices

Appendix 1- ECSS draft Shareholder Agreement.

Appendix 2- ECTC draft Shareholder Agreement.

Background documents

Operations and Management Contract- Ely Markets

Operations and Management Contract- Grounds Maintenance

Dated

2027⁵

EAST CAMBRIDGESHIRE DISTRICT COUNCIL

and

EAST CAMBS STREET SCENE LIMITED

Shareholders' Agreement relating to

EAST CAMBS STREET SCENE LIMITED

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Shareholders' agreement

Dated

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Parties

- (1) **East Cambridgeshire District Council** whose principal office is at The Grange, Nutholt Lane, Ely, Cambridgeshire CB7 4EE (the **Council**); and
- (2) **East Cambs Street Scene Limited** a company incorporated and registered in England and Wales with registered number [11150811] whose registered office is at The Grange, Nutholt Lane, Ely, Cambridgeshire CB7 4EE (the **Company**).

Introduction

- (A) The Company was incorporated under the Companies Act 2006 on 15 January 2018 as a private company limited by shares. At the date of this Agreement the Company has issued share capital of 1 ordinary share of £1 owned by the Council.
- (B) This Agreement sets out the terms upon which the Council will participate in the Company as its shareholder.

Agreed terms

1 Interpretation and definitions

1.1 In this Agreement:

Annual Accounts Date means the accounting reference date of the Company from time to time;

Board of Directors means the board of directors of the Company;

Board Meeting means a meeting of the Board of Directors;

Business means the business of the Company described in clause 2 and the Business Plan and such other business as the Shareholder may agree from time to time in writing should be carried on by the Company;

Business Plan means the business plan adopted in accordance with clause 2 and clause 6 and applicable from time to time;

Business Day means a day other than a Saturday or Sunday or public holiday in England and Wales;

Director means any director for the time being of the Company, including where applicable any alternate director;

Environmental Information Regulations means the Environmental Information Regulations 2004;

FOIA means the Freedom of Information Act 2000;

Information has the meaning given to it under section 84 of the FOIA;

Prudential Code for Local Authorities means the Chartered Institute of Public Finance and Accountancy (**CIPFA**) Prudential Code for Capital Finance in Local Authorities 2011 and accompanying Guidance Notes for Practitioners 2013 (as updated or revised from time to time);

Request for Information has the meaning set out in the FOIA or any apparent request for information made under the FOIA or the Environment Information Regulations;

Security Interest means any mortgage, charge, pledge, lien, hypothecation, assignment by way of security, guarantee, indemnity, debenture, declaration of trust, right of set off or combination of accounts or any other type of preferential arrangement (including without limitation, a title transfer and retention of title) or any encumbrance or security interest whatsoever, howsoever arising and whether monetary or not;

Shareholder means any holder of any Share(s), being the Council at the date of this Agreement;

Shareholder Committee means the Council's Operational Services Committee operating in accordance with clause 5;

Shareholder Committee Meeting means a meeting of the members of the Shareholder Committee;

Shares means the ordinary shares of £1 each in the capital of the Company;

Subsidiary Undertaking means a subsidiary undertaking as defined in section 1162 of the Companies Act 2006.

- 1.2 Any reference to a statute or statutory provision is a reference to it as it is in force from time to time, taking account of any change, extension, consolidation or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 Clause headings in this Agreement are for convenience only and do not affect the construction of any provision.
- 1.4 References to any gender shall include the other genders and references to the singular shall include the plural and vice versa.
- 1.5 Any reference to a person (which for the purposes of this Agreement shall include a firm, unincorporated association, body corporate, government, state or agency of state, any association or partnership or joint venture (whether or not having a separate legal personality)) shall include its successors in title.
- 1.6 In this Agreement all obligations and liabilities on the part of the Shareholder are (unless expressly stated otherwise) several and shall be construed accordingly.
- 1.7 Any reference to a document in the agreed form shall be a reference to that document in the form agreed and initialled by or on behalf of each of the Shareholder for the purpose of identification and attached to this Agreement.

2 The business of the Company

- 2.1 The parties acknowledge and agree that unless and until they agree otherwise, the business of the Company shall be the provision of the waste & recycling service, parks & open space service and Ely Markets service to the Council and to other customers in accordance with the Business Plan. The Company shall:
- 2.1.1 carry on and conduct its business and affairs in a proper and efficient manner, for its own benefit, on sound commercial profit-making principles; and
- 2.1.2 transact all its business on arm's length terms.
- 2.2 The first Business Plan of the Company is in agreed form and will be approved by the Board of Directors as soon as reasonably practicable following execution of this Agreement. The Company shall circulate a revised version of the then current Business Plan to the Shareholder Committee annually in advance of the coming financial year and invite the Shareholder Committee to provide comments on and approve the Business Plan. No adoption, variation or replacement of any Business Plan shall take effect unless such adoption, variation or replacement has received consent in accordance with clause 6.
- 2.3 Each Business Plan shall be substantially in the format of the first Business Plan and shall be for a three year period.
- 2.4 Notwithstanding any other provision of this clause 2 following the requisite approval by the Directors of a new proposed Business Plan or an amended or updated and revised Business Plan, such draft Business Plan shall become, or such amended or updated Business Plan shall become, the Business Plan of the Company. For any period when a proposed Business Plan presented under clause 2.2 has not been approved in accordance with clause 6 and adopted by the Directors in accordance with this Agreement, the relevant existing Business Plan shall continue to be the Business Plan of the Company.
- 2.5 The principal place of business of the Company and the principal place for management of the Company shall be within the boundaries of East Cambridgeshire, unless otherwise agreed in writing by the Council.

3 Conduct of the Company's affairs

- 3.1 With the exception of those matters requiring consent pursuant to clause 6, the day-to-day management of the Company shall be vested in the Directors. Without prejudice to the generality of the foregoing, the Directors will determine the general policies of the Company and the manner in which the Business is to be carried out to those matters requiring consent pursuant to clause 6 and to any other express provisions of this Agreement.
- 3.2 The Company shall not carry out any activity which would render the holding of Shares by the Council unlawful provided that where a proposed change of law would render such shareholding unlawful the Council will use all reasonable endeavours to take such steps as are necessary to allow it to continue lawfully to hold its Shares.
- 3.3 The Company will if it requires any approval, consent or licence for the carrying on of its Business in the manner in which it is from time to time carried on or proposed to be carried on, use all reasonable endeavours to obtain and maintain the same in full force and effect.

- 3.4 The Company shall permit any Director to discuss the affairs, finances and accounts of the Company and its subsidiaries at any time with any officers and employees of the Council and the Shareholder Committee designated in writing by the Council for this purpose. All books, records, accounts and documents relating to the business and the affairs of the Company and its subsidiaries shall be open to the inspection of any officers and employees designated in writing by the Council for this purpose, who shall be entitled to make any copies thereof as he or she deems appropriate to keep the Council properly informed about the business and affairs of the Company or to protect its interests as a Shareholder. Any confidential information secured as a consequence of such discussions and examinations shall be kept confidential by the Council and its designated officers and employees in accordance with the terms of clause 11.
- 3.5 The Company agrees with the Council that it will maintain effective and appropriate control systems in relation to the financial, accounting and record-keeping functions of the Company and will generally keep the Council informed of the progress of the Company's business and affairs and in particular will procure that the Shareholder is given such information and such access to the officers, employees and premises of the Company as it may reasonably require for the purposes of enabling it to monitor its investment in the Company and to comply with its obligations under the Prudential Code for Local Authorities.
- 3.6 The Company shall not breach nor cause the Council to be in breach of the relevant provisions of the Local Authorities (Companies) Order 1995, Part V of the Local Government and Housing Act 1989 or the Local Government Public Involvement in Health Act 2007 or its obligations under the Public Contracts Regulations 2015 or ~~any European Directive on public procurement~~the Procurement Act 2023.
- 3.7 The Company shall:
- 3.7.1 identify the participation of the Council on all its official business stationery; and
- 3.7.2 not engage in any party political publicity.
- 3.8 The Company use its reasonable endeavours to ensure that:
- 3.8.1 no more than 19.99% of the total average annual turnover of the Company in any period of three financial years shall derive from activities undertaken for any person who is not the Council or a person over which the Council exercises Control (and for the purposes of this obligation only Control shall have the meaning attributed to it in Regulation 12(3) or 12(5) of the Public Contracts Regulations 2015); and
- 3.8.2 the Company shall not accept any direct private capital participation (with the exception of non-controlling and non-blocking forms of private capital participation as may be required by English legislation in conformity with the Treaty on the Functioning of the European Union, which do not exert a decisive influence on the Company).
- 3.9 If any of the parties become aware that, for whatever reason, that the Company no longer fulfils any of the requirements of Regulation 12(4) of the Public Contracts Regulations 2015 (Teckal Non-Compliance) or such Teckal Non-Compliance is likely to occur, it shall immediately notify the other parties. Following such notification, the parties shall work together to ensure action is taken to either:

- 3.9.1 remedy the Teckal Non-Compliance; or
- 3.9.2 take steps to prevent such Teckal Non-Compliance occurring.
- 3.10 The Company will comply with the Seven Principles of Public Life (also known as the Nolan Principles). For the avoidance of doubt the Seven Principles of Public Life are Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership.
- 3.11 Where the Company enters into formal secondment agreements with Council employees, those employees are not permitted to make decisions on behalf of the Council except for those permitted by the Council.
- 3.12 The Company shall grant a right of access of information to the Council's Internal Auditors provided always that any information provided is held in confidence.
- 4 **The Board of Directors**
- 4.1 The Board of Directors shall consist of not less than 3 Directors.
- 4.2 Board Meetings shall be held no less than 4 times per annum. All Board Meetings shall be held in the United Kingdom.
- 4.3 Unless otherwise agreed by all the Directors, not less than 5 Business Days' notice shall be given to each of the Directors of all Board Meetings. The notice convening a Board Meeting shall include an agenda specifying in reasonable detail the matters to be discussed, together with any relevant papers for discussion at such meeting. If any matter is not identified in reasonable detail the Board of Directors shall not decide on it unless all Directors agree in writing
- 4.4 The Deputy Leader of Council and the Chairman or Vice Chairman of Operational Services Committee are appointed as Observers to the Board.
- 4.5 The purpose of an observer is to add value to discussions, i.e. bring additional knowledge to the debate, at board meetings and provide reassurance to the shareholder, i.e. the Council, that the Board of Directors is meeting its obligations to the company and the shareholder.
- 4.6 Rights of the Observers
 - 4.6.1 The Board of Directors shall notify the Observers of when meetings will be held;
 - 4.6.2 The Observers may contribute to discussions at Board Meetings;
 - 4.6.3 The Observers are not entitled to vote on any decision contemplated by the Board of Directors;
 - 4.6.4 The attendance of Observers is not counted towards a quorum;
 - 4.6.5 Observers will have access to board papers and minutes and must comply with confidentiality rules of the company; and
 - 4.6.6 Observers cannot participate on matters where there is a direct conflict of interest related to their personal business.

5 Shareholder Committee

The Council's Operational Services Committee will act as the Shareholder Committee. The Shareholder Committee shall act in accordance with its terms of reference.

5.1 The Shareholder Committee shall have powers to make decisions in accordance with its terms of reference. The purpose of the Shareholder Committee shall be to:

5.1.1 recommend, where relevant, the appointment of the Chairman of the Board and approve best practice policies in relation to such an appointment;

5.1.2 receive, review, comment on and approve the Business Plan;

5.1.3 receive the Quarterly Management Accounts of the Company; and

5.1.4 make recommendations to the Council on how it should exercise the functions flowing from its ownership of Shares.

5.2 A Shareholder Committee Meeting shall be held no less than two times per annum.

5.3 The Chairman of the Shareholder Committee may call an extraordinary committee;

(i) On giving not less than 6 Business Days' notice; and

(ii) The Chairman and Managing Director will be required to attend. If they are unable to attend, a Board Director will attend in their place.

5.4 Unless otherwise agreed by the Chairman of the Shareholder Committee appointed by the Council before a Shareholder Committee Meeting not less than 5 Business Days' notice shall be given to each of the members of the Shareholder Committee and to the directors of the Company which shall include an agenda specifying in reasonable detail the matters to be discussed, together with any relevant papers for discussion at such meeting.

5.7 In addition to the Shareholder Committee, the Company will host an annual all Council Member Shareholder Seminar.

5.8 The Company will supply all Members of the Council with the agendas and support papers provided to the Board of Directors and shall do so at the same time, as far as possible, as the relevant board receives those agendas and papers (except for minutes, which need only be supplied after signature). The Company will supply the members of the Shareholder Committee on request with all information and data reasonably requested by the Shareholder Committee to enable it to reach an informed judgment on any matter within its purview.

5.9 The Managing Director and Chairman of the Board shall be required to attend the Shareholder Committee where the Annual Business Plan is to be approved. The Managing Director shall be required to attend any Shareholder Committee meeting where there is a matter for decision relating to the Company on the Agenda. All other meetings shall be attended by personnel authorised by the Board of Directors as necessary.

6 Reserved Matters (Matters requiring consent of the Council)

- 6.1 Each of the parties shall take all such steps and do all such acts and things as may be necessary or desirable, including, without limitation, exercising all voting and other rights and powers of control available to it in relation to the Company, so as to procure (insofar as it is able to do so by the exercise of those rights and powers) that at all times during the term of this Agreement no Company Member shall, except with the prior consent of the Council, take any action or pass any resolution in respect of:
- 6.1.1 issuing or allotting any shares;
 - 6.1.2 granting any option or other interest (in the form of convertible securities or in any other form) over or in its share capital, redeeming or purchasing any of its own shares or effecting any other reorganisation of its share capital;
 - 6.1.3 altering in any respect its articles of association or the rights attaching to any of its shares;
 - 6.1.4 permitting the registration of any person as a Shareholder of the Company;
 - 6.1.5 re-registering the Company as a public limited company, or as any entity other than a company limited by shares;
 - 6.1.6 applying for the listing or trading of any shares or debt securities on any stock exchange or market;
 - 6.1.7 forming any Subsidiary Undertaking or acquiring shares in any other company or participating in a joint venture (incorporated or not);
 - 6.1.8 amalgamating or merging with any other company or business undertaking; or
 - 6.1.9 passing any resolution for its winding up or presenting any petition for its administration, unless it has become insolvent;
 - 6.1.10 changing the nature of the Business or commencing any new business which is not ancillary or incidental to the Business;
 - 6.1.11 appointing or removing any Director;
 - 6.1.12 the grant of any power of attorney or the appointment of any agent, or the entry into any other agreement which devolves or transfers management control of the Company from the Board of Directors;
 - 6.1.13 agreeing to remunerate (by payment of fees, the provision of benefits-in-kind or otherwise) any Director;
 - 6.1.14 the entry into any service contract, terms of appointment or other agreement with a Director;
 - 6.1.15 agreeing to remunerate (by payment of fees, the provision of benefits-in-kind or otherwise) any key employee of, or consultant to, the Company at a rate in excess of £100,000 per annum;
 - 6.1.16 establishing or amending any profit-sharing, share option, bonus or other incentive scheme of any nature for directors;

- 6.1.17 making any bonus payment to any director;
 - 6.1.18 borrowing any monies which require a guarantee or security from the Council (other than normal trade credit);
 - 6.1.19 changing its name or its registered office; or
 - 6.1.20 replacing or modifying the Business Plan;
 - 6.1.21 entering into an agreement to do any of the foregoing.
- 6.2 The Council is permitted to delegate (subject to its own formal approval process) any of the functions detailed in 6.1.1-6.1.21 to the Operational Services Committee, acting as the Shareholder Committee

7 **Production of accounts and reports**

- 7.1 The Company shall provide the information referred to in clause 7.2 to the Shareholder.
- 7.2 The Company shall instruct its accountants to prepare a balance sheet of the Company, as at the Annual Accounts Date each year and a consolidated profit and loss account of the Company, for the 12 month financial period ending on the Annual Accounts Date each year to be presented to the Shareholder within 3 calendar months after the end of the period to which such accounts relate. The Company shall appoint an independent auditor to audit the balance sheet and profit and loss account for the Company.
- 7.3 The Company will provide to the Shareholder full details of any actual or prospective material change in the Business or the financial position or affairs of the Company, as soon as such details are available.
- 7.4 All accounts referred to in this clause shall be prepared in pounds sterling and in accordance with applicable law and generally accepted accounting standards, principles and practices in the United Kingdom.
- 7.5 The Company shall provide an Annual Governance Statement to the Shareholder and this shall be supplied at the same time as the information required in clause 7.2. The Annual Governance Statement shall include the key risks for the Company in the forthcoming year and set out the process for escalating the risks to the Council where these affect the Council as the Shareholder.

8 **Anti-corruption**

- 8.1 In this clause:

Adequate Procedures means adequate procedures, as referred to in section 7(2) of the Bribery Act 2010 and any guidance issued by the Secretary of State under section 9 of the Bribery Act 2010;

Associated Person means in relation to a party to this Agreement, any person (including an officer, employee, agent or Subsidiary Undertaking) who performs services for or on behalf of that party;

Corrupt Activity means extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money-laundering or any similar activity including without limitation any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 Bribery Act;

8.2 Each party declares and undertakes to the other parties that:

8.2.1 it has not and will not in relation to the Company or the operation of the Business, engage in any Corrupt Activity;

8.2.2 it will not authorise or acquiesce in or turn a blind eye to, any Corrupt Activity;

8.2.3 it has and will maintain in place, or in the case of the Company it will put and maintain in place, Adequate Procedures designed to prevent any Associated Person from undertaking any conduct that would give rise to an offence under section 7 of the Bribery Act 2010;

8.2.4 it has not and will not engage in any activity, practice or conduct which could place the Company or any other party in breach of section 7(1) Bribery Act;

8.2.5 from time to time, at the reasonable request of the other party, it will confirm in writing that it has complied with its undertakings under this clause [8.28.2](#) and will provide any information reasonably requested by the other party in support of such compliance; and

8.2.6 it will ensure that its Associated Persons will comply with its commitments under this clause 8.

9 **No fetter**

Nothing in this Agreement shall operate to bind the Company or any Council to the extent that it constitutes an unlawful fetter on any statutory power of the Company or the Council.

10 **Duration and termination**

10.1 This Agreement shall continue in full force and effect, unless otherwise agreed in writing by the Council, provided that this Agreement shall cease to have effect as regards any Shareholder who ceases to hold any Shares in the Company, except for any provisions which are expressed to continue in force thereafter.

10.2 Termination of this Agreement pursuant to this clause shall not release any party from any liability which at the time of termination has already accrued to another party or which may accrue after termination of this Agreement in respect of any act or omission prior to such termination.

11 **Confidentiality**

11.1 This clause applies to:

11.1.1 all information of a confidential nature disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by one party to one of the other parties whether before or after the date of this Agreement;

- 11.1.2 any information concerning the business affairs of one party or other information confidential to that party which one of the other parties learns as a result of the relationship between the parties pursuant to this Agreement;
- including any information relating to any party's products, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business affairs (together, **Confidential Information**).
- 11.2 In this clause, in relation to a particular item of Confidential Information:
- 11.2.1 the **Disclosing Party** means the party by whom (or on whose behalf) that Confidential Information is disclosed or (where there is no such disclosure) the party to whom the Confidential Information relates, or to whom the Confidential Information is proprietary or who otherwise desires that the confidentiality of the Confidential Information is respected; and
- 11.2.2 the **Receiving Party** means the other party.
- 11.3 During the term of this Agreement and after termination of this Agreement for any reason whatsoever, the Receiving Party shall:
- 11.3.1 keep the Confidential Information confidential;
- 11.3.2 not disclose the Confidential Information to any other person other than with the prior written consent of the Disclosing Party or in accordance with this clause 11; and
- 11.3.3 not use the Confidential Information for any purpose other than the performance of its obligations and the exercise of its rights under this Agreement.
- 11.4 Notwithstanding clause ~~11.3~~^{11.311.3}, the Receiving Party may disclose Confidential Information as follows:
- 11.4.1 to its professional advisers (each, a Recipient) providing the Receiving Party ensures that each Recipient is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement; and
- 11.4.2 to other parties to this Agreement, and where disclosure is required by law, by any court of competent jurisdiction or by any appropriate regulatory body.
- 11.5 This clause 11 shall not apply to any Confidential Information which:
- 11.5.1 is at the date of this Agreement or at a later date comes into the public domain other than through breach of this Agreement by the Receiving Party or any Recipient;
- 11.5.2 was known by the Receiving Party before receipt from (or on behalf of) the Disclosing Party (or, as appropriate, before the Receiving Party learnt of the same pursuant to this Agreement) and which had not previously been obtained under an obligation of confidence; or

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- 11.5.3 subsequently comes lawfully into the Receiving Party's possession from a third party, free of any obligation of confidence.
- 11.6 The Company acknowledges that the Council is subject to the requirements of the FOIA, the Environmental Information Regulations and other access to information and propriety controls as provided in legislation and shall facilitate the Council's compliance with its Information disclosure requirements pursuant to and in the manner provided for in clauses 11.7 and 11.10.
- 11.7 If a Council receives a Request for Information in relation to Information that the Company is holding and which the Council does not hold itself, the Council shall refer to the Company such Request for Information as soon as practicable and in any event within five (5) Business Days of receiving a Request for Information, and the Company shall:
- 11.7.1 provide the Council with a copy of all such Information in the form that the Council requires as soon as practicable and in any event within 10 Business Days (or such other period as the Council acting reasonably may specify) of the Council's request; and
- 11.7.2 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 11.8 Following notification under clause 11.7, and up until such time as the Company has provided the Council with all the Information specified in clause 11.7, the Company may make representations to the Council as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Council shall be responsible for determining, at its absolute discretion:
- 11.8.1 whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and
- 11.8.2 whether Information is to be disclosed in response to a Request for Information, and in no event shall the Company respond directly to a Request for Information.
- 11.9 The Company acknowledges that (notwithstanding the provisions of clause 11.1) the Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under part I of the Freedom of Information Act 2000, be obliged under the FOIA or the Environmental Information Regulations to disclose Information concerning the Company:
- 11.9.1 in certain circumstances without consulting with the Company; or
- 11.9.2 following consultation with the Company and having taken its views into account.
- 11.10 The Company shall transfer to the relevant Council any Request for Information received by it as soon as practicable and in any event within 3 Business Days of receiving it.

11.11 The Company acknowledges that any lists provided which list or outline Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with clause 11.9.

12 **General**

12.1 Except where this Agreement provides otherwise, each party shall pay its own costs relating to or in connection with the negotiation, preparation, execution and performance by it of this Agreement and of each agreement or document entered into pursuant to this Agreement and the transactions contemplated by this Agreement.

12.2 No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.

12.3 No delay, indulgence or omission in exercising any right, power or remedy provided by this Agreement or by law shall operate to impair or be construed as a waiver of such right, power or remedy or of any other right, power or remedy.

12.4 No single or partial exercise or non-exercise of any right, power or remedy provided by this Agreement or by law shall preclude or restrict any other or further exercise of such rights, power or remedy or of any other right, power or remedy.

12.5 A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement.

12.6 A waiver of a breach of any of the terms of this agreement or of a default under this Agreement will not prevent a party from subsequently requiring compliance with the waived obligation.

12.7 The rights and remedies provided by this Agreement are cumulative and are not exclusive of any rights, powers or remedies provided by law.

12.8 If any provision of this Agreement is or becomes illegal, invalid or unenforceable under the law of any jurisdiction, that shall not affect or impair:

12.8.1 the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or

12.8.2 the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.

12.9 This Agreement, and the documents referred to in it, constitute the entire agreement and understanding between the parties and supersede any previous agreement, understanding or arrangement between the parties relating to the subject matter of this Agreement.

12.10 Each of the parties acknowledges and agrees that:

12.10.1 in entering into this Agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, assurance, warranty or understanding of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement or those documents;

12.10.2 the only remedy available to it arising out of or in connection with this Agreement or its subject matter shall be for damages for breach of contract under the terms of this Agreement;

12.10.3 nothing in this clause shall operate to limit or exclude any liability for fraud.

12.11 No person who is not a party to this Agreement shall have any right to enforce this Agreement or any agreement or document entered into pursuant to this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

13 **Assignment**

This Agreement is personal to the parties and neither party shall assign, transfer, charge, make the subject of a trust or deal in any other manner with this Agreement or any of its rights or obligations under it, or purport to do any of the same, nor sub-contract any or all of its obligations under this Agreement without the prior written consent of the other party save where the Council's function are transferred or assigned to a successor body. Each party is entering into this Agreement for its benefit and not for the benefit of another person.

14 **No partnership or agency**

Nothing in this Agreement is intended to or shall operate to create a partnership, or to authorise any party to act as agent for any other or to establish any other fiduciary relationship between the parties. No party shall have authority to act in the name or on behalf of or otherwise to bind any other party in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

15 **Notices**

15.1 Any notice or other communication given under this Agreement:

15.1.1 shall be in writing;

15.1.2 shall be signed by or on behalf of the party giving it;

15.1.3 shall be served by delivering it by hand or sending it by pre-paid recorded delivery or registered post or by fax at the address or fax number set out in clause [15.245.2](#) of the party due to receive it and marked for the attention of the person named in clause [15.245.2](#) (or at such other address in the United Kingdom or fax number or marked for the attention of such other person as last notified in writing to the other parties;

15.1.4 shall be deemed to have been received:

(a) if delivered by hand, at the time of actual delivery;

(b) in the case of pre-paid recorded delivery or registered post, two Business Days after the date of posting; and

(c) in the case of fax, at the time of completion of transmission.

15.2 The addresses of the parties for the purposes of clause ~~15.145.4~~ are as set out at the beginning of this Agreement and the notice details and fax numbers are as follows:

15.3 To prove delivery it shall be sufficient to prove that the envelope containing the notice was addressed to the address of the relevant party set out in clause ~~15.245.2~~ and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery, registered post or airmail letter, or that the notice was transmitted by fax to the fax number of the relevant party set out in clause ~~15.245.2~~.

15.4 In this clause if deemed receipt occurs before 9am on a Business Day the notice shall be deemed to have been received at 9am on that day, and if deemed receipt occurs after 5pm on a Business Day, or on a day which is not a Business Day, the notice shall be deemed to have been received at 9am on the next Business Day.

15.5 For the avoidance of doubt, a notice or other communication given under this Agreement shall not be validly served if sent by e-mail.

16 Counterparts

This Agreement may be executed in any number of counterparts and by different parties on separate counterparts (which may be facsimile copies) but shall not take effect until each party has executed at least one counterpart. Each counterpart shall constitute an original, and all the counterparts together shall constitute a single agreement.

17 Applicable law

17.1 The parties agree that this Agreement and any dispute or claim arising out of or in connection with this Agreement, its negotiation or its subject matter, or any non-contractual obligation arising in connection with the foregoing, shall be governed by and construed in accordance with English law.

17.2 Each of the parties irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales in relation to any claim or matter arising out of or in connection with this Agreement, its negotiation or its subject matter, or any non-contractual obligation arising in connection with the foregoing.

This Agreement has been executed on the date stated at the beginning of this Agreement.

The Common Seal of EAST CAMBRIDGESHIRE)
DISTRICT COUNCIL was hereunto affixed in)
the presence of: -)

| Director Legal Services/~~Chief Executive~~

EXECUTED AS A DEED by East Cambs Street Scene)
Limited in the presence of:)

Director

Director/Secretary

Dated

~~2025~~2027

EAST CAMBRIDGESHIRE DISTRICT COUNCIL
and
EAST CAMBS TRADING COMPANY LIMITED

Shareholders' Agreement relating to
East Cambs Trading Company Limited

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Shareholders' agreement

Dated

~~2019~~ 2027

Parties

- (1) **East Cambridgeshire District Council** whose principal office is at The Grange, Nutholt Lane, Ely, Cambridgeshire CB7 4EE (the **Council**); and
- (2) **East Cambs Trading Company Limited** a company incorporated and registered in England and Wales with registered number [10061867] whose registered office is at The Grange, Nutholt Lane, Ely, Cambridgeshire CB7 4EE (the **Company**).

Introduction

- (A) The Company was incorporated under the Companies Act 2006 on 14th March 2016 as a private company limited by shares. At the date of this Agreement the Company has issued share capital of 1 ordinary share of £1 owned by the Council.
- (B) This Agreement sets out the terms upon which the Council will participate in the Company as its shareholder.

Agreed terms

1 Interpretation and definitions

1.1 In this Agreement:

Annual Accounts Date means the accounting reference date of the Company from time to time;

Board of Directors means the board of directors of the Company;

Board Meeting means a meeting of the Board of Directors;

Business means the business of the Company described in clause 2 and the Business Plan and such other business as the Shareholder may agree from time to time in writing should be carried on by the Company;

Business Plan means the business plan adopted in accordance with clause 2 and clause 6 and applicable from time to time;

Business Day means a day other than a Saturday or Sunday or public holiday in England and Wales;

Director means any director for the time being of the Company, including where applicable any alternate director;

Environmental Information Regulations means the Environmental Information Regulations 2004;

FOIA means the Freedom of Information Act 2000;

Information has the meaning given to it under section 84 of the FOIA;

Prudential Code for Local Authorities means the Chartered Institute of Public Finance and Accountancy (**CIPFA**) Prudential Code for Capital Finance in Local Authorities 2011 and accompanying Guidance Notes for Practitioners 2013 (as updated or revised from time to time);

Request for Information has the meaning set out in the FOIA or any apparent request for information made under the FOIA or the Environment Information Regulations;

Security Interest means any mortgage, charge, pledge, lien, hypothecation, assignment by way of security, guarantee, indemnity, debenture, declaration of trust, right of set off or combination of accounts or any other type of preferential arrangement (including without limitation, a title transfer and retention of title) or any encumbrance or security interest whatsoever, howsoever arising and whether monetary or not;

Shareholder means any holder of any Share(s), being the Council at the date of this Agreement;

Shareholder Committee means the Council's Finance and Assets Committee operating in accordance with clause 5;

Shareholder Committee Meeting means a meeting of the members of the Shareholder Committee;

Shares means the ordinary shares of £1 each in the capital of the Company;

Subsidiary Undertaking means a subsidiary undertaking as defined in section 1162 of the Companies Act 2006.

- 1.2 Any reference to a statute or statutory provision is a reference to it as it is in force from time to time, taking account of any change, extension, consolidation or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 Clause headings in this Agreement are for convenience only and do not affect the construction of any provision.
- 1.4 References to any gender shall include the other genders and references to the singular shall include the plural and vice versa.
- 1.5 Any reference to a person (which for the purposes of this Agreement shall include a firm, unincorporated association, body corporate, government, state or agency of state, any association or partnership or joint venture (whether or not having a separate legal personality)) shall include its successors in title.
- 1.6 In this Agreement all obligations and liabilities on the part of the Shareholder are (unless expressly stated otherwise) several and shall be construed accordingly.
- 1.7 Any reference to a document in the agreed form shall be a reference to that document in the form agreed and initialled by or on behalf of each of the Shareholder for the purpose of identification and attached to this Agreement.

2 The business of the Company

2.1 The parties acknowledge and agree that unless and until they agree otherwise, the business of the Company shall be the provision of ~~the markets service~~ grounds maintenance activity and property consultancy, property development and development services to the Council and to other customers in accordance with the Business Plan. The Company shall:

2.1.1 carry on and conduct its business and affairs in a proper and efficient manner, for its own benefit, on sound commercial profit-making principles; and

2.1.2 transact all its business on arm's length terms.

2.2 The first Business Plan of the Company is in agreed form and will be approved by the Board of Directors as soon as reasonably practicable following execution of this Agreement. The Company shall circulate a revised version of the then current Business Plan to the Shareholder Committee annually in advance of the coming financial year and invite the Shareholder Committee to provide comments and approve the Business Plan. No adoption, variation or replacement of any Business Plan shall take effect unless such adoption, variation or replacement has received consent in accordance with clause 6.

2.3 Each Business Plan shall be substantially in the format of the first Business Plan and shall be for a three year period.

2.4 Notwithstanding any other provision of this clause 2 following the requisite approval by the Directors of a new proposed Business Plan or an amended or updated and revised Business Plan, such draft Business Plan shall become, or such amended or updated Business Plan shall become, the Business Plan of the Company. For any period when a proposed Business Plan presented under clause 2.2 has not been approved in accordance with clause 6 and adopted by the Directors in accordance with this Agreement, the relevant existing Business Plan shall continue to be the Business Plan of the Company.

2.5 The principal place of business of the Company and the principal place for management of the Company shall be within the boundaries of East Cambridgeshire, unless otherwise agreed in writing by the Council.

3 Conduct of the Company's affairs

3.1 With the exception of those matters requiring consent pursuant to clause 6, the day-to-day management of the Company shall be vested in the Directors. Without prejudice to the generality of the foregoing, the Directors will determine the general policies of the Company and the manner in which the Business is to be carried out to those matters requiring consent pursuant to clause 6 and to any other express provisions of this Agreement.

3.2 The Company shall not carry out any activity which would render the holding of Shares by the Council unlawful provided that where a proposed change of law would render such shareholding unlawful the Council will use all reasonable endeavours to take such steps as are necessary to allow it to continue lawfully to hold its Shares.

3.3 The Company will if it requires any approval, consent or licence for the carrying on of its Business in the manner in which it is from time to time carried on or proposed to be carried on, use all reasonable endeavours to obtain and maintain the same in full force and effect.

- 3.4 The Company shall permit any Director to discuss the affairs, finances and accounts of the Company and its subsidiaries at any time with any officers and employees of the Council and the Shareholder Committee as designated in writing by the Council for this purpose. All books, records, accounts and documents relating to the business and the affairs of the Company and its subsidiaries shall be open to the inspection of any officers and employees designated in writing by the Council for this purpose, who shall be entitled to make any copies thereof as he or she deems appropriate to keep the Council properly informed about the business and affairs of the Company or to protect its interests as a Shareholder. Any confidential information secured as a consequence of such discussions and examinations shall be kept confidential by the Council and its designated officers and employees in accordance with the terms of clause 11.
- 3.5 The Company agrees with the Council that it will maintain effective and appropriate control systems in relation to the financial, accounting and record-keeping functions of the Company and will generally keep the Council informed of the progress of the Company's business and affairs and in particular will procure that the Shareholder is given such information and such access to the officers, employees and premises of the Company as it may reasonably require for the purposes of enabling it to monitor its investment in the Company and to comply with its obligations under the Prudential Code for Local Authorities.
- 3.6 The Company shall not breach nor cause the Council to be in breach of the relevant provisions of the Local Authorities (Companies) Order 1995, Part V of the Local Government and Housing Act 1989 or the Local Government Public Involvement in Health Act 2007 or its obligations under the Public Contracts Regulations 2015 or ~~any European Directive on public procurement~~the Procurement Act 2023.
- 3.7 The Company shall:
- 3.7.1 identify the participation of the Council on all its official business stationery; and
 - 3.7.2 not engage in any party political publicity.
- 3.8 The Company will comply with the Seven Principles of Public Life (also known as the Nolan Principles). For the avoidance of doubt the Seven Principles of Public Life are Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership.
- 3.9 The Company shall grant a right of access of information to the Council's Internal Auditors provided always that any information provided is held in confidence.

4 The Board of Directors and The Board Observers

- 4.1 The Board of Directors shall consist of not less than 3 Directors.
- 4.2 Board Meetings shall be held no less than 4 times per annum. All Board Meetings shall be held in the United Kingdom.
- 4.3 Unless otherwise agreed by all the Directors, not less than 5 Business Days' notice shall be given to each of the Directors of all Board Meetings. The notice convening a Board Meeting shall include an agenda specifying in reasonable detail the matters to be discussed, together with any relevant papers for discussion at such meeting. If any matter is not identified in reasonable detail the Board of Directors shall not decide on it unless all Directors agree in writing

4.4 The Leader of Council and the Chairman of Finance & Assets Committee are appointed as Observers to the Board.

4.5 The purpose of an observer is to add value to discussions, i.e. bring additional knowledge to the debate, at board meetings and provide reassurance to the shareholder, i.e. the Council, that the Board of Directors is meeting its obligations to the company and the shareholder

4.6 Rights of the Observers

4.6.1 The Board of Directors shall notify the Observers of when meetings will be held;

4.6.2 The Observers may contribute to discussions at Board Meetings;

4.6.3 The Observers are not entitled to vote on any decision contemplated by the Board of Directors;

4.6.4 The attendance of Observers is not counted towards a quorum;

4.6.5 Observers will have access to board papers and minutes and must comply with confidentiality rules of the company; and

4.6.6 Observers cannot participate on matters where there is a direct conflict of interest related to their personal business

5 **Shareholder Committee**

5.1 The Council's Finance and Assets Committee will act as the Shareholder Committee. The Shareholder Committee shall act in accordance with its terms of reference.

5.2 The Shareholder Committee shall have powers to make decisions in accordance with its terms of reference. The purpose of the Shareholder Committee shall be to:

5.2.1 recommend, where relevant, the appointment of the Chairman of the Board and approve best practice policies in relation to such an appointment;

5.2.2 receive, review, comment on and approve the Business Plan;

5.2.3 approve the Company entering into any joint venture;

5.2.4 approve the borrowing of any external monies (other than from the Cambridgeshire and Peterborough Combined Authority)

5.2.5 receive the Quarterly Management Accounts of the Company; and

5.2.6 make recommendations to the Council on how it should exercise the functions flowing from its ownership of Shares.

5.3 A Shareholder Committee Meeting shall be held no less than two times per annum.

- 5.4 The Chairman of the Shareholder Committee may call an extraordinary committee:
- (i) On giving not less than 6 Business Days' notice; and
 - (ii) The Chairman and Managing Director will be required to attend. If they are unable to attend, a Board Director will attend in their place.
- 5.5 Unless otherwise agreed by the Chairman of the Shareholder Committee appointed by the Council before a Shareholder Committee Meeting not less than 5 Business Days' notice shall be given to each of the members of the Shareholder Committee and to the directors of the Company which shall include an agenda specifying in reasonable detail the matters to be discussed, together with any relevant papers for discussion at such meeting.
- 5.7 In addition to the Shareholder Committee, the Company will host an annual all Council Member Shareholder Seminar.
- 5.8 The Company will supply all Members of the Council with the agendas and support papers provided to the Board of Directors and shall do so at the same time, as far as possible, as the relevant board receives those agendas and papers (except for minutes, which need only be supplied after signature). The Company will supply the members of the Shareholder Committee on request with all information and data reasonably requested by the Shareholder Committee to enable it to reach an informed judgment on any matter within its purview.
- 5.9 The Managing Director and Chairman of the Board shall be required to attend the Shareholder Committee where the Annual Business Plan is to be approved. The Managing Director shall be required to attend any Shareholder Committee meeting where there is a matter for decision relating to the Company on the Agenda. All other meetings shall be attended by personnel authorised by the Board of Directors as necessary.

6 Reserved Matters (Matters requiring consent of the Council)

- 6.1 Each of the parties shall take all such steps and do all such acts and things as may be necessary or desirable, including, without limitation, exercising all voting and other rights and powers of control available to it in relation to the Company, so as to procure (insofar as it is able to do so by the exercise of those rights and powers) that at all times during the term of this Agreement no Company Member shall, except with the prior consent of the Council, take any action or pass any resolution in respect of:
- 6.1.1 issuing or allotting any shares;
 - 6.1.2 granting any option or other interest (in the form of convertible securities or in any other form) over or in its share capital, redeeming or purchasing any of its own shares or effecting any other reorganisation of its share capital;
 - 6.1.3 altering in any respect its articles of association or the rights attaching to any of its shares;
 - 6.1.4 permitting the registration of any person as a Shareholder of the Company;

- 6.1.5 re-registering the Company as a public limited company, or as any entity other than a company limited by shares;
 - 6.1.6 applying for the listing or trading of any shares or debt securities on any stock exchange or market;
 - 6.1.7 forming any Subsidiary Undertaking except for a Resident Management Company or acquiring shares in any other company or participating in a joint venture (incorporated or not);
 - 6.1.8 amalgamating or merging with any other company or business undertaking; or
 - 6.1.9 passing any resolution for its winding up or presenting any petition for its administration, unless it has become insolvent;
 - 6.1.10 changing the nature of the Business or commencing any new business which is not ancillary or incidental to the Business;
 - 6.1.11 appointing or removing any Director;
 - 6.1.12 the grant of any power of attorney or the appointment of any agent, or the entry into any other agreement which devolves or transfers management control of the Company from the Board of Directors;
 - 6.1.13 agreeing to remunerate (by payment of fees, the provision of benefits-in-kind or otherwise) any Director;
 - 6.1.14 the entry into any service contract, terms of appointment or other agreement with a Director;
 - 6.1.15 agreeing to remunerate (by payment of fees, the provision of benefits-in-kind or otherwise) any key employee of, or consultant to, the Company at a rate in excess of £100,000 per annum;
 - 6.1.16 establishing or amending any profit-sharing, share option, bonus or other incentive scheme of any nature for directors;
 - 6.1.17 making any bonus payment to any director;
 - 6.1.18 borrowing any monies which require a guarantee or security from the Council (other than normal trade credit);
 - 6.1.19 changing its name or its registered office; or
 - 6.1.20 replacing or modifying the Business Plan;
 - 6.1.21 entering into an agreement to do any of the foregoing.
- 6.2 The Council is permitted to delegate (subject to its own formal approval process) any of the functions detailed in 6.1.1-6.1.21 to the Finance & Assets Committee, acting as the Shareholder Committee

7 **Production of accounts and reports**

- 7.1 The Company shall provide the information referred to in clause 7.2 to the Shareholder.
- 7.2 The Company shall instruct its accountants to prepare a balance sheet of the Company, as at the Annual Accounts Date each year and a consolidated profit and loss account of the Company, for the 12 month financial period ending on the Annual Accounts Date each year to be presented to the Shareholder within 3 calendar months after the end of the period to which such accounts relate. The Company shall appoint an independent auditor to audit the balance sheet and profit and loss account for the Company.
- 7.3 The Company will provide to the Shareholder full details of any actual or prospective material change in the Business or the financial position or affairs of the Company, as soon as such details are available.
- 7.4 All accounts referred to in this clause shall be prepared in pounds sterling and in accordance with applicable law and generally accepted accounting standards, principles and practices in the United Kingdom.
- 7.5 The Company shall provide an Annual Governance Statement to the Shareholder and this shall be supplied at the same time as the information required in clause 7.2. The Annual Governance Statement shall include the key risks for the Company in the forthcoming year and set out the process for escalating the risks to the Council where these affect the Council as the Shareholder.

8 **Anti-corruption**

- 8.1 In this clause:

Adequate Procedures means adequate procedures, as referred to in section 7(2) of the Bribery Act 2010 and any guidance issued by the Secretary of State under section 9 of the Bribery Act 2010;

Associated Person means in relation to a party to this Agreement, any person (including an officer, employee, agent or Subsidiary Undertaking) who performs services for or on behalf of that party;

Corrupt Activity means extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money-laundering or any similar activity including without limitation any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 Bribery Act;

- 8.2 Each party declares and undertakes to the other parties that:

- 8.2.1 it has not and will not in relation to the Company or the operation of the Business, engage in any Corrupt Activity;
- 8.2.2 it will not authorise or acquiesce in or turn a blind eye to, any Corrupt Activity;
- 8.2.3 it has and will maintain in place, or in the case of the Company it will put and maintain in place, Adequate Procedures designed to prevent any Associated Person from undertaking any conduct that would give rise to an offence under section 7 of the Bribery Act 2010;

- 8.2.4 it has not and will not engage in any activity, practice or conduct which could place the Company or any other party in breach of section 7(1) Bribery Act;
- 8.2.5 from time to time, at the reasonable request of the other party, it will confirm in writing that it has complied with its undertakings under this clause [8.28-2](#) and will provide any information reasonably requested by the other party in support of such compliance; and
- 8.2.6 it will ensure that its Associated Persons will comply with its commitments under this clause 8.

9 **No fetter**

Nothing in this Agreement shall operate to bind the Company or any Council to the extent that it constitutes an unlawful fetter on any statutory power of the Company or the Council.

10 **Duration and termination**

- 10.1 This Agreement shall continue in full force and effect, unless otherwise agreed in writing by the Council, provided that this Agreement shall cease to have effect as regards any Shareholder who ceases to hold any Shares in the Company, except for any provisions which are expressed to continue in force thereafter.
- 10.2 Termination of this Agreement pursuant to this clause shall not release any party from any liability which at the time of termination has already accrued to another party or which may accrue after termination of this Agreement in respect of any act or omission prior to such termination.

11 **Confidentiality**

11.1 This clause applies to:

- 11.1.1 all information of a confidential nature disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by one party to one of the other parties whether before or after the date of this Agreement;
- 11.1.2 any information concerning the business affairs of one party or other information confidential to that party which one of the other parties learns as a result of the relationship between the parties pursuant to this Agreement;
- including any information relating to any party's products, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business affairs (together, **Confidential Information**).

11.2 In this clause, in relation to a particular item of Confidential Information:

- 11.2.1 the **Disclosing Party** means the party by whom (or on whose behalf) that Confidential Information is disclosed or (where there is no such disclosure) the party to whom the Confidential Information relates, or to whom the Confidential Information is proprietary or who otherwise desires that the confidentiality of the Confidential Information is respected; and
- 11.2.2 the **Receiving Party** means the other party.

11.3 During the term of this Agreement and after termination of this Agreement for any reason whatsoever, the Receiving Party shall:

11.3.1 keep the Confidential Information confidential;

11.3.2 not disclose the Confidential Information to any other person other than with the prior written consent of the Disclosing Party or in accordance with this clause 11; and

11.3.3 not use the Confidential Information for any purpose other than the performance of its obligations and the exercise of its rights under this Agreement.

11.4 Notwithstanding clause ~~11.3~~^{11.341.3}, the Receiving Party may disclose Confidential Information as follows:

11.4.1 to its professional advisers (each, a Recipient) providing the Receiving Party ensures that each Recipient is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement; and

11.4.2 to other parties to this Agreement, and where disclosure is required by law, by any court of competent jurisdiction or by any appropriate regulatory body.

11.5 This clause 11 shall not apply to any Confidential Information which:

11.5.1 is at the date of this Agreement or at a later date comes into the public domain other than through breach of this Agreement by the Receiving Party or any Recipient;

11.5.2 was known by the Receiving Party before receipt from (or on behalf of) the Disclosing Party (or, as appropriate, before the Receiving Party learnt of the same pursuant to this Agreement) and which had not previously been obtained under an obligation of confidence; or

11.5.3 subsequently comes lawfully into the Receiving Party's possession from a third party, free of any obligation of confidence.

11.6 The Company acknowledges that the Council is subject to the requirements of the FOIA, the Environmental Information Regulations and other access to information and propriety controls as provided in legislation, and shall facilitate the Council's compliance with its Information disclosure requirements pursuant to and in the manner provided for in clauses 11.7 and 11.10.

11.7 If a Council receives a Request for Information in relation to Information that the Company is holding and which the Council does not hold itself, the Council shall refer to the Company such Request for Information as soon as practicable and in any event within five (5) Business Days of receiving a Request for Information, and the Company shall:

11.7.1 provide the Council with a copy of all such Information in the form that the Council requires as soon as practicable and in any event within 10 Business Days (or such other period as the Council acting reasonably may specify) of the Council's request; and

- 11.7.2 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 11.8 Following notification under clause 11.7, and up until such time as the Company has provided the Council with all the Information specified in clause 11.7, the Company may make representations to the Council as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Council shall be responsible for determining, at its absolute discretion:
- 11.8.1 whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and
- 11.8.2 whether Information is to be disclosed in response to a Request for Information, and in no event shall the Company respond directly to a Request for Information.
- 11.9 The Company acknowledges that (notwithstanding the provisions of clause 11.1) the Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under part I of the Freedom of Information Act 2000, be obliged under the FOIA or the Environmental Information Regulations to disclose Information concerning the Company:
- 11.9.1 in certain circumstances without consulting with the Company; or
- 11.9.2 following consultation with the Company and having taken its views into account.
- 11.10 The Company shall transfer to the relevant Council any Request for Information received by it as soon as practicable and in any event within 3 Business Days of receiving it.
- 11.11 The Company acknowledges that any lists provided which list or outline Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with clause 11.9.
- 12 **General**
- 12.1 Except where this Agreement provides otherwise, each party shall pay its own costs relating to or in connection with the negotiation, preparation, execution and performance by it of this Agreement and of each agreement or document entered into pursuant to this Agreement and the transactions contemplated by this Agreement.
- 12.2 No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 12.3 No delay, indulgence or omission in exercising any right, power or remedy provided by this Agreement or by law shall operate to impair or be construed as a waiver of such right, power or remedy or of any other right, power or remedy.
- 12.4 No single or partial exercise or non-exercise of any right, power or remedy provided by this Agreement or by law shall preclude or restrict any other or further exercise of such rights, power or remedy or of any other right, power or remedy.

- 12.5 A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement.
- 12.6 A waiver of a breach of any of the terms of this agreement or of a default under this Agreement will not prevent a party from subsequently requiring compliance with the waived obligation.
- 12.7 The rights and remedies provided by this Agreement are cumulative and are not exclusive of any rights, powers or remedies provided by law.
- 12.8 If any provision of this Agreement is or becomes illegal, invalid or unenforceable under the law of any jurisdiction, that shall not affect or impair:
- 12.8.1 the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or
- 12.8.2 the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.
- 12.9 This Agreement, and the documents referred to in it, constitute the entire agreement and understanding between the parties and supersede any previous agreement, understanding or arrangement between the parties relating to the subject matter of this Agreement.
- 12.10 Each of the parties acknowledges and agrees that:
- 12.10.1 in entering into this Agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, assurance, warranty or understanding of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement or those documents;
- 12.10.2 the only remedy available to it arising out of or in connection with this Agreement or its subject matter shall be for damages for breach of contract under the terms of this Agreement;
- 12.10.3 nothing in this clause shall operate to limit or exclude any liability for fraud.
- 12.11 No person who is not a party to this Agreement shall have any right to enforce this Agreement or any agreement or document entered into pursuant to this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

13 **Assignment**

This Agreement is personal to the parties and neither party shall assign, transfer, charge, make the subject of a trust or deal in any other manner with this Agreement or any of its rights or obligations under it, or purport to do any of the same, nor sub-contract any or all of its obligations under this Agreement without the prior written consent of the other party save where the Council's function are transferred or assigned to a successor body. Each party is entering into this Agreement for its benefit and not for the benefit of another person.

14 **No partnership or agency**

Nothing in this Agreement is intended to or shall operate to create a partnership, or to authorise any party to act as agent for any other or to establish any other fiduciary relationship between the parties. No party shall have authority to act in the name or on behalf of or otherwise to bind any other party in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

15 **Notices**

15.1 Any notice or other communication given under this Agreement:

15.1.1 shall be in writing;

15.1.2 shall be signed by or on behalf of the party giving it;

15.1.3 shall be served by delivering it by hand or sending it by pre-paid recorded delivery or registered post or by fax at the address or fax number set out in clause [15.245-2](#) of the party due to receive it and marked for the attention of the person named in clause [15.245-2](#) (or at such other address in the United Kingdom or fax number or marked for the attention of such other person as last notified in writing to the other parties;

15.1.4 shall be deemed to have been received:

(a) if delivered by hand, at the time of actual delivery;

(b) in the case of pre-paid recorded delivery or registered post, two Business Days after the date of posting; and

(c) in the case of fax, at the time of completion of transmission.

15.2 The addresses of the parties for the purposes of clause [15.145-4](#) are as set out at the beginning of this Agreement and the notice details and fax numbers are as follows:

15.3 To prove delivery it shall be sufficient to prove that the envelope containing the notice was addressed to the address of the relevant party set out in clause [15.245-2](#) and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery, registered post or airmail letter, or that the notice was transmitted by fax to the fax number of the relevant party set out in clause [15.245-2](#).

15.4 In this clause if deemed receipt occurs before 9am on a Business Day the notice shall be deemed to have been received at 9am on that day, and if deemed receipt occurs after 5pm on a Business Day, or on a day which is not a Business Day, the notice shall be deemed to have been received at 9am on the next Business Day.

15.5 For the avoidance of doubt, a notice or other communication given under this Agreement shall not be validly served if sent by e-mail.

16 **Counterparts**

This Agreement may be executed in any number of counterparts and by different parties on separate counterparts (which may be facsimile copies), but shall not take effect until each party has executed at least one counterpart. Each counterpart shall constitute an original, and all the counterparts together shall constitute a single agreement.

17 **Applicable law**

17.1 The parties agree that this Agreement and any dispute or claim arising out of or in connection with this Agreement, its negotiation or its subject matter, or any non-contractual obligation arising in connection with the foregoing, shall be governed by and construed in accordance with English law.

17.2 Each of the parties irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales in relation to any claim or matter arising out of or in connection with this Agreement, its negotiation or its subject matter, or any non-contractual obligation arising in connection with the foregoing.

This Agreement has been executed on the date stated at the beginning of this Agreement.

The Common Seal of EAST CAMBRIDGESHIRE)
DISTRICT COUNCIL was hereunto affixed in)
the presence of:-)

Legal Services Manager/Chief Executive

EXECUTED AS A DEED by EAST CAMBS)
TRADING COMPANY LIMITED in the)
presence of:)

Director

Director/Secretary

